

CRP  
530**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**Name RUTLEDGE, EUGENE D  
(Last) (First) (Initial)Prisoner Number F-79385 HIGH DESERT STATE PRISONInstitutional Address P.O. BOX 3030, SUSANVILLE, CA. 96127

APR 28 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAUNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAEUGENE DARREL RUTLEDGE

(Enter the full name of plaintiff in this action.)

CV ) 08 2193

Case No. \_\_\_\_\_  
(To be provided by the clerk of court)PETITION FOR A WRIT  
OF HABEAS CORPUS

(PR)

E-filing

(Enter the full name of respondent(s) or jailor in this action)

Read Comments Carefully Before Filing InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

MS-LMB-CRBP

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

**10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE**

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
13 County Superior Court, Oakland):

<u>ALAMEDA SUPERIOR COURT</u>	<u>OAKLAND</u>
Court	Location
(b) Case number, if known	<u>154409 ; 152773</u>
(c) Date and terms of sentence	<u>MAY 25, 2007 20 YEARS 4 MONTHS</u>
(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.)	Yes <u>X</u> No _____

20 Where?  
21 Name of Institution: HIGH DESERT STATE PRISON

23        2. For what crime were you given this sentence? (If your petition challenges a sentence for  
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 9 COUNTS OF CALIFORNIA PENAL CODE SECTION 212.5(c) ROBBERY 2ND  
27 degree; 1 COUNT CALIFORNIA PENAL CODE SECTION 212.5(c) ATTEMPTED  
28 ROBBERY 2ND degree; 1 CALIFORNIA PENAL CODE SECTION 667(a) Prior FEDERAL  
conviction.

1           3. Did you have any of the following?

2           Arraignment:    Yes       No \_\_\_\_\_

3           Preliminary Hearing:                               Yes       No \_\_\_\_\_

4           Motion to Suppress:                               Yes \_\_\_\_\_      No

5           4. How did you plead?

6           Guilty \_\_\_\_\_   Not Guilty    Nolo Contendere \_\_\_\_\_

7           Any other plea (specify) \_\_\_\_\_ N/A \_\_\_\_\_

8           5. If you went to trial, what kind of trial did you have?

9           Jury       Judge alone \_\_\_\_\_      Judge alone on a transcript \_\_\_\_\_

10          6. Did you testify at your trial?                   Yes \_\_\_\_\_      No

11          7. Did you have an attorney at the following proceedings:

12           (a)     Arraignment                                  Yes       No \_\_\_\_\_

13           (b)     Preliminary hearing                       Yes       No \_\_\_\_\_

14           (c)     Time of plea                               Yes       No \_\_\_\_\_

15           (d)     Trial                                       Yes       No \_\_\_\_\_

16           (e)     Sentencing                               Yes       No \_\_\_\_\_

17           (f)     Appeal                                       Yes       No \_\_\_\_\_

18           (g)     Other post-conviction proceeding   Yes \_\_\_\_\_      No

19          8. Did you appeal your conviction?               Yes       No \_\_\_\_\_

20           (a)     If you did, to what court(s) did you appeal?

21           Court of Appeal                                   Yes       No \_\_\_\_\_

22           Year: 2007                                       Result: PENDING

23           Supreme Court of California                   Yes \_\_\_\_\_      No

24           Year: \_\_\_\_\_                                       Result: \_\_\_\_\_

25           Any other court                                   Yes       No \_\_\_\_\_

26           Year: 06-08                                       Result: WRT OF HABUS CORPUS DENIED

27  
28           (b)     If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes        No X

2 (c) Was there an opinion? Yes        No X

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes        No X

5 If you did, give the name of the court and the result:

6 N/A

7     

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to  
9 this conviction in any court, state or federal? Yes X No       

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that  
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed  
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit  
13 for an order authorizing the district court to consider this petition. You may not file a second or  
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28  
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following  
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: CALIFORNIA COURT OF APPEALS, FIRST DISTRICT, DIVISION  
19 FIVE

20 Type of Proceeding: WIT OF MANDATE / PROHIBITION (No. A117284)

21 Grounds raised (Be brief but specific):

22 a. TRIAL COURT IN VIOLATION OF CODE OF CIVIL PROCEDURE  
SECTION 170-6 PETITIONARY CHALLENGE TO RECUSE JUDGE

23 b. DENIAL OF MOTION TO SET ASIDE, DENIED IN ABUSE  
OF DISCRETION

24 c. \_\_\_\_\_

25 d. \_\_\_\_\_

26     

27 Result: PETITION DENIED Date of Result: 04/12/07

28 II. Name of Court: CALIFORNIA COURT OF APPEAL, FIRST DISTRICT,  
DIVISION FIVE

Type of Proceeding: WIT OF HABEAS CORPUS (No. A117062)

Grounds raised (Be brief but specific):

1 a. UNNECESSARY DELAY IN VIOLATION OF PENAL CODE SECTION 825

2 b. PRELIMINARY EXAMINATION WAS HELD IN VIOLATION OF PENAL  
CODE SECTION 859b

3 c. \_\_\_\_\_

4 d. \_\_\_\_\_ 11

5 Result: PETITION DENIED Date of Result: 03/23/07

6 III. Name of Court: CALIFORNIA COURT OF APPEALS, FIRST DISTRICT,  
DIVISION FIVE

7 Type of Proceeding: WRIT OF HABEAS CORPUS (NO. A118351)

8 Grounds raised (Be brief but specific):

9 a. MOTION TO REVERSE TRIAL JUDGE DENIED ERROUROUSLY

10 b. APPOINTED COUNSEL INEFFECTIVE FOR FAILING TO CITIGATE DUE  
PROCESS VIOLATIONS AND STRONGLY TRIAL VIOLATIONS THAT EXISTED

11 c. \_\_\_\_\_

12 d. \_\_\_\_\_ 11

13 Result: PETITION DENIED Date of Result: 11/02/07

14 IV. Name of Court: CALIFORNIA SUPREME COURT

15 Type of Proceeding: WRIT OF HABEAS CORPUS (NO. S152658; S159052; S160704)

16 Grounds raised (Be brief but specific):

17 a. EXHAUSTED STATEMENT (SEE ATTACHMENT)

18 b. \_\_\_\_\_ 11

19 c. \_\_\_\_\_ 11

20 d. \_\_\_\_\_ 11

21 Result: (SEE ATTACHMENT) Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes \_\_\_\_\_ No X

24 Name and location of court: N/A

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

- ATTACHMENT PAGE -

(2) RELIEF SOUGHT IN ANY PROCEEDING OTHER THAN AN  
APPEAL: CASE NO. 8152658

IV. (CONTINUED)

GROUND'S RAISED

a. UNNECESSARY DELAY TO BRING PETITIONER TO A PROMPT PROBABLE  
CAUSE DETERMINATION AND STATE CHARGE ARRANGEMENT VIOLATED  
DUE PROCESS UNDER STATE ~~AND~~ CONSTITUTION AND FEDERAL  
CONSTITUTION. PETITIONER SOUGHT DISMISSAL OF CAUSE

b. PETITIONER'S PRELIMINARY EXAMINATION (NO. 517270) WAS HELD  
IN VIOLATION OF STATE STATUTORY 60 DAYS OF PETITIONER'S ARRAIGNMENT  
ON CRIMINAL NO. 517270, THIS VIOLATES DUE PROCESS STATE CONSTITUTION  
AND FEDERAL CONSTITUTION. PETITIONER SOUGHT DISMISSAL OF CAUSE

c. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO SUPPRESS  
ILLEGALLY OBTAINED EVIDENCE. COUNSEL FAILURE PREJUDICED PETITIONER.  
PETITIONER SOUGHT REVERSAL OF CONVICTION.

d. COUNSEL OF RECORD FROM CRIMINAL DOCKET NO. 517270, 152773,  
525397, 154409 RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL  
WHERE PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED AND  
STATE'S CONSTITUTIONAL SPEEDY TRIAL WERE VIOLATED ALSO. PETITIONER  
SOUGHT DISMISSAL OF CAUSE.

e. COUNSEL APPOINTED WAS INEFFECTIVE FOR CONSENTING WITH  
PROSECUTION TO A STATUTORY DISMISSAL UNDER PENAL CODE SECTION  
1887.7 WHERE PROSECUTION ABLE TO RE-FILE WHERE CONSTITUTIONAL  
GROUNDS WERE AVAILABLE TO BAR PROSECUTION. PETITIONER SOUGHT  
DISMISSAL OF CAUSE.

RESULT: PETITION DENIED

DATE OF RESULT: 09-12-07

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(a) RELIEF SOUGHT IN ANY PROCEEDINGS OTHER THAN AN APPEAL:

V. NAME OF COURT: SUPREME COURT OF CALIFORNIA

TYPE OF PROCEEDING: WRIT OF HABEAS CORPUS NO. S158052

GROUNDS RAISED:

- a. TRIAL COURT ERRONEOUSLY DENIED PETITIONER'S MOTION  
UNDER CODE OF CIVIL PROCEDURES SECTION 170.6 AS BEING  
UNTIMELY, PETITIONER DUE PROCESS RIGHTS VIOLATED. PETITIONER  
SOUGHT REVERSAL OF CONVICTION AND NULL AND VOID ALL RULINGS.  
b. COURT APPOINTED COUNSEL RENDERED PETITIONER INEFFECTIVE  
ASSISTANCE OF COUNSEL, WHERE FROM CRIMINAL DOCKETS  
NO. 517270; 152773; 525397; 154409 ALL COUNSEL HAS  
FAILED TO LITIGATE DUE PROCESS AND SPEEDY TRIAL VIOLATIONS  
THAT EXISTED IN THE CRIMINAL CASE AGAINST PETITIONER. PETITIONER  
SOUGHT DISMISSAL OF CAUSE.

RESULT: PETITION DENIED

DATE OF RESULT 03-26-08

VI. NAME OF COURT: SUPREME COURT OF CALIFORNIA

TYPE OF PROCEEDING: WRIT OF HABEAS CORPUS NO. S160704

GROUNDS RAISED:

- a. COUNSELS OF RECORD RENDERED FEDERAL CONSTITUTIONALLY  
INEFFECTIVENESS FOR FAILING TO MOVE ON A SUPPRESSION MOTION  
ON ILLEGALLY OBTAINED EVIDENCE. COUNSEL FAILED TO CHALLENGE  
THE LEGALITY OF AN ILLEGAL ENTRY OF PETITIONER'S RESIDENCE  
BY OAKLAND POLICE AND DELIBERATELY CONCEALED IT FROM THE  
COURT CONSIDERING SEARCH WARRANT AFFIDAVIT. PETITIONER SOUGHT  
REVERSAL OF CONVICTION.

[CONTINUED NEXT PAGE]

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(2) RELIEF SOUGHT IN ANY PROCEEDING OTHER THAN AN  
APPEAL = (CONT.)

VI. GROUNDS RAISED (CONT.)

b. COURT APPOINTED COUNSEL RENDERED INEFFECTIVE ASSISTANCE  
OF COUNSEL UNDER FEDERAL CONSTITUTION WHERE IN CRIMINAL  
DOCKETS NO(S) 517270; 152773; 525397; 154409 PETITIONER  
SUFFERED DUE PROCESS AND SPEEDY TRIAL RIGHTS VIOLATIONS OF  
STATE AND FEDERAL CONSTITUTIONS. PETITIONER SOUGHT DISMISSAL  
OF CAUSE AND REVERSAL OF CONVICTION.

c. COURT APPOINTED RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL  
UNDER FEDERAL CONSTITUTION WHERE IN CRIMINAL DOCKETS  
NO(S) 517270; 152773; 525397; 154409 PETITIONER SUFFERED  
A VIOLATION OF DUE PROCESS OF THE LAW WHERE PETITIONER'S  
RIGHT TO CONFRONT WITNESSES AGAINST HIM UNDER THE  
SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION WAS  
DENIED. PETITIONER SOUGHT REVERSAL OF CONVICTION AND  
DISMISSAL

d. PETITIONER WAS DEPRIVED OF HIS RIGHTS UNDER FEDERAL  
CONSTITUTION WHERE PROSECUTION FAILED TO DISCLOSE EXCULPATORY  
EVIDENCE, AND COURT EXCLUDED EXCULPATORY EVIDENCE THAT  
WAS MATERIAL TO PETITIONER'S GUILT BEING NEGATED, AND  
WOULD RENDERED CULPABILITY OF GUILT AT PETITIONER'S  
TRIAL HAD EXCULPATORY EVIDENCE BEEN AVAILABLE TO BE  
INTRODUCED AT THE TRIAL OF PETITIONER. PETITIONER SOUGHT  
REVERSAL OF CONVICTION AND DISMISSAL OF CAUSE WITH PREJUDICE  
AGAINST PROSECUTION.

[Continued]

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(a) RELIEF SOUGHT IN ANY PROCEEDING OTHER THAN AN APPEAL : (CONT.)

GROUNDS RAISED (CONT.)

VI. e. TRIAL COURT DENIAL OF PETITIONER'S MOTION TO RECUSAL/DISQUALIFY, AND HIS MOTION TO SET ASIDE TRIAL INFORMATION AGAINST HIM WAS AN ABUSE OF DISCRETION AND VIOLATES PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS UNDER UNITED STATES CONSTITUTION. PETITIONER SOUGHT REVERSAL OF CONVICTION AND DISMISSAL WITH PREJUDICE

f. COURT APPOINTED COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL UNDER FEDERAL CONSTITUTION WHERE IN CRIMINAL DOCKET NO(S). 517270; 152773; 525397; 154409 WHERE PETITIONER SUFFERED DUE PROCESS LAW VIOLATIONS WHERE A PRUDENT PROBABLE CAUSE DETERMINATION REQUIREMENT WAS NOT COMPLIED WITH AFTER A WARRANTLESS ARREST OF PETITIONER FOR ROBBERY, AND DELAY WHERE DELAY WAS UNNECESSARY AND INTENTIONAL TO GAIN TACTICAL ADVANTAGE OVER THE PETITIONER. COURT APPOINTED COUNSEL FAILED TO CHALLENGE THE VIOLATION ON A MOTION TO SET ASIDE. PETITIONER SOUGHT REVERSAL OF CONVICTION AND A DISMISSAL OF CAUSE.

g. COURT APPOINTED COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL TO PETITIONER BY HAVING A CONFLICT OF INTEREST ISSUE OF PETITIONER'S MENTAL COMPETENCY, WHERE PETITIONER HAD NO MENTAL ILLNESS OR SHOWS ANY SIGN OF MENTAL INCOMPETENCY OR DEVELOPMENT OF A MENTAL DISABILITY THIS PREJUDICED PETITIONER RIGHT TO EFFECTIVE COUNSEL UNDER THE FEDERAL CONSTITUTION. PETITIONER SOUGHT REVERSAL OF CONVICTION AND DISMISSAL OF CAUSE. [ CONTINUED ]

PETITION FOR WRIT OF HABEAS CORPUS - 5(e) -

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(2) RELIEF SOUGHT IN ANY PROCEDURE OTHER THAN AN  
APPEAL : (cont.)

VI. g. RESULT : PETITION ORDERED STRICKEN AND WAS  
ORDERED FILED AS A SUPPLEMENTAL TO PETITION FOR  
WRIT OF HABEAS CORPUS NO. 815805 which was DENIED  
MARCH 26, 2008. DATE OF RESULT 03-04-08

II

PETITION FOR WRIT OF HABEAS CORPUS - 5(f) -

1 need more space. Answer the same questions for each claim.

2        [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5        Claim One: COUNSEL OF RECORD RENDERED PETITIONAL FEDERAL CONSTITUTIONALLY  
6 INEFFECTIVE ASSISTANCE OF COUNSEL. [SEE ATTACHMENT]

7        Supporting Facts: [SEE ATTACHMENT]

8                  u

9                  u

10                 u

11        Claim Two: [SEE ATTACHMENT]

12                 u

13        Supporting Facts: [SEE ATTACHMENT]

14                 u

15                 u

16                 u

17        Claim Three: [SEE ATTACHMENT]

18                 u

19        Supporting Facts: [SEE ATTACHMENT]

20                 u

21                 u

22                 u

23        If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25                 ~~None~~ N/A

26                 u

27                 u

28                 u

- ATTACHMENT PAGE -

B. GROUNDS FOR RELIEF

CLAIM ONE: [CONT.] INEFFECTIVE ASSISTANCE OF COUNSEL WAS RENDERED WHERE COUNSEL FAILED TO MOVE ON A SUPPRESSION MOTION ON ILLEGALLY OBTAINED/EVIDENCE. COUNSEL FAILED TO CHALLENGED THE LEGALITY OF AN ILLEGAL SEARCH AND ENTRY OF PETITIONER'S RESIDENCE BY THE OAKLAND POLICE AND DELIBERATELY CONCEALED IT FROM THE COURT CONSIDERING THE SEARCHED MURRAY AFFIDAVIT. PETITIONER SEEKS REVERSAL OF CONVICTION, BECAUSE OF COUNSEL'S FAILINGS THERE IS A REASONABLE PROBABILITY THAT RESULTS WOULD HAVE BEEN IN THE PETITIONER'S FAVOR.

SUPPORTING FACTS: ON MARCH 8, 2006 OAKLAND POLICE RECEIVED AN ANONYMOUS CALL REGARDING A NEWSPAPER ARTICLE SEEKING ANY INFORMATION OR AN IDENTITY OF A ROBBERY SUSPECT. THE CALLER (WHO REMAINED UNKNOWN) STATED THAT PETITIONER WAS THE SUSPECT IN THE NEWSPAPER ARTICLE. OAKLAND POLICE RAN PETITIONER'S NAME THROUGH IT'S COMPUTER SYSTEM AND FOUND A BENCH WARRANT (FEDERAL) FOR A FAILURE TO APPEAR AT A PROBATION VIOLATION HEARING. OAKLAND POLICE SENT OFFICERS TO ARREST PETITIONER FOR THE FEDERAL BENCH WARRANT (NO. CR-03-40116 CW), BUT WHEN OFFICERS ARRIVED TO PETITIONER'S RESIDENCE, PETITIONER WAS OUTSIDE OF HIS RESIDENCE, OFFICERS WALKED PETITIONER AND PLACED HIM INTO HIS PATROL CAR (POLICE REPORT NO. 06-022056), WHILE PETITIONER WAS PLACED IN HIS CAR (POLICE REPORT NO. 06-022056) OFFICER WALKER AND OTHER OFFICERS ENTERED AND SEARCHED PETITIONER RESIDENCE WITHOUT A WARRANT. WHEREAFTER SGT. A. PEREZ SOUGHT A SEARCH WARRANT AND FAILED TO INFORM THE COURT CONCERNING THE SEARCH WARRANT ACOORD ABOUD THE WARRANTLESS ENTRY AND SEARCH BY HIS OFFICERS HE SENT. PETITIONER'S APPOINTED COUNSEL FAILED TO MOVE FOR A SUPPRESSION MOTION OR CHALLENGE THE LEGALITY OF THE WARRANTLESS SEARCH AND ENTRY OR THE OMISSIONS [CONT.]

- ATTACHMENT PAGE -

[CONT.] THAT SGT. A PERET DID NOT SUBMIT IN THE AFFIDAVIT FOR SEARCH WARRANT. (SEE CASE NOTE 06-01874; AFFIDAVIT FOR SEARCH WARRANT)

CLAIM TWO: COURT APPOINTED COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL UNDER FEDERAL CONSTITUTION WHERE IN CRIMINAL DOCKET NO(S). 517270; 152773; 825397; 154409 PETITIONER SUFFERED DUE PROCESS AND SPEEDY TRIAL RIGHTS VIOLATIONS OF STATE AND UNITED STATES CONSTITUTIONS. PETITIONER SEEKS REVERSAL OF CONVICTION AND DISMISSAL OF CONVICTION.

SUPPORTING FACTS: ON MARCH 8, 2006 PETITIONER WAS ARRESTED (SEE CASE NOTES NO(S). 06-011874; 06-019306; 06-014545; 06-04760) FOR ROBBERY. ON MARCH 13, 2006 PETITIONER WAS ARRAIGNED AND GIVEN A PROMPT PROBABLE CAUSE DETERMINATION FOR MARCH 8, 2006 WARRANTLESS ARREST. PETITIONER WAIVED NO RIGHT FOR A PRELIMINARY EXAMINATION IN 60 DAYS OF HIS ARRAIGNMENT. ON JUNE 5, 2006 PETITIONER'S PRELIMINARY EXAMINATION WAS SET WITH NO EXPLANATION FOR THIS UNNECESSARY DELAY. ON JUNE 29, 2006 AN INDICTMENT INFORMATION WAS FILED, WHERE ON AUGUST 2, 2006 (TWO DAYS AFTER A MARSDEN HEARING AGAINST COUNSEL 07-31-C BY PETITIONER) COUNSEL (APPOINTED) MADE A MOTION FOR PETITIONER TO BE EVALUATED FOR COUNSEL'S BELIEF THAT PETITIONER HAS A MENTAL INCOMPETENCY TO PROCEED AND ASSISTANCE IN HIS DEFENSE. PROSECUTION MADE NO OBJECTION, AND PETITIONER HAD TO EVALUATIONS COMPLETED WHICH REFLECTED THAT PETITIONER WAS COMPETENT TO STAND TRIAL AND ASSIST HIS DEFENSE. ON OCTOBER 25, 2006 AFTER THE COURT MADE A FINDING OF PETITIONER BEING COMPETENT, COURT GAVE THE PROSECUTION 60 DAYS TO BRING PETITIONER TO TRIAL, BUT THE PROSECUTION REQUESTED NONE OR THE 60 DAYS WHATSOEVER. ON DECEMBER 13, 2006 WHILE PETITIONER WAS MOVING TO RECUSE THE TRIAL JUDGE BECAUSE TRIAL JUDGE HAD VIOLATED PETITIONER'S

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[CONT.] SPEEDY TRIAL RIGHTS AND FOR BLASPHMY FOR REQUIRING PETITIONER TO BE EVALUATED FOR MENTAL INCOMPETENCY. THE TRIAL JUDGE GRANTED PETITIONER'S RECUSAL MOTION AND STATED ON THE RECORD THAT LEGAL ERROR WAS MADE ON HIS PART. IN THE SAME HEARING AND RECORDS APPOINTED COUNSEL STATED THAT COUNSEL KNEW PETITIONER WANTED A DISMISSAL ON HIS RIGHTS OF BOTH STATE STATUTORY AND CONSTITUTIONAL RIGHTS TO SPEEDY TRIAL BEING VIOLATED AND FOR HIS UNITED STATES CONSTITUTION SIXTH AMENDMENT RIGHT TO SPEEDY TRIAL BEEN VIOLATED BY THE COURT. ON DECEMBER 19, 2006 COUNSEL AND THE PROSECUTION MADE AN AGREEMENT TO DISMISS THE CRIMINAL CAUSE NO. 152773 TO REFILE. THE COUNSEL (APPOINTED) HAD NO CONSENT FROM PETITIONER TO CONDUCT ANY AGREEMENT FOR A REFILING OF THE CRIMINAL CAUSE, AND ON THAT DATE CAUSE WAS DISMISSED TO REFILE AND CRIMINAL DOCKET NO. 525397 WAS FILED (12-19-06) CHARGING PETITIONER WITH 19 COUNTS OF ROBBERY. ON JANUARY 3, 2006 COUNSEL ALLOWED FOR AN UNNECESSARY CONTINUANCE TO OCCUR AT THE PRELIMINARY EXAMINATION FOR PROSECUTION WHERE NO GOOD CAUSE WAS AVAILABLE FOR IT. COUNSEL(S) THAT WERE APPOINTED TO PETITIONER NEVER MADE ARGUMENTS FOR THE SUBSTANTIAL RIGHTS THAT WERE IN VIOLATION OF PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS, FAIR TRIAL, AND SPEEDY TRIAL, WHICH ARE GROUNDS FOR A DISMISSAL. THERE IS A REASONABLE PROBABILITY THAT FOR COUNSEL(S) FAILINGS THE RESULT WOULD HAVE BEEN FAVORABLE FOR PETITIONER, WHERE NOW PETITIONER HAS BEEN PREJUDICED.

- ATTACHMENT SHEET -

GROUNDS FOR RELIEF: [CONT.]

CLAIM THREE: APPOINTED COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL UNDER FEDERAL CONSTITUTION WHERE IN CRIMINAL DOCKETS NO(S). 517270; 152773; 525327; 154409 PETITIONER SUFFERED THE VIOLATIONS OF DUE PROCESS OF LAW AND RIGHT TO CONFRONT ALL WITNESSES AGAINST HIM, UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND THE FIFTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. PETITIONER SEEKS A REVERSAL OF CONVICTION AND DISMISSAL OF ~~CAUSE~~ BECAUSE OF COUNSEL'S FAILING IN MAKING MOTIONS FOR THE VIOLATIONS OF PETITIONER'S CONSTITUTIONAL RIGHTS. THERE IS A REASONABLE PROBABILITY THAT RESULT WOULD HAVE BEEN FAVORABLE FOR PETITIONER.

SUPPORTING FACTS: ON MARCH 8, 2008 OAKLAND POLICE RECEIVED AN ANONYMOUS CALL WHERE CALLER STATED THAT PETITIONER WAS THE ROBBERY SUSPECT IN A NEWS PAPER ARTICLE SEEKING INFORMATION ON IDENTITY OF ROBBERY SUSPECT. AFTER RUNNING PETITIONER'S NAME AFTER THE ANONYMOUS CALL, OAKLAND POLICE RAN PETITIONER'S NAME ON THEIR COMPUTER SYSTEM AND FOUND THAT THERE WAS A FEDERAL Bench WARRANT FOR PETITIONER'S ARREST FOR FAILURE TO APPEAR AT A VIOLATION OF SUPERVISED RELEASE CONDITIONS. OAKLAND POLICE SENT OFFICER TO ARREST PETITIONER FOR THE BENCH WARRANT, BUT INTENDED TO ARREST PETITIONER FOR ROBBERY. AT CRIMINAL DOCKET NO. 517270 PROSECUTION DID NOT DISCLOSE THE IDENTITY OF THE ANONYMOUS CALLER AND HAD REASON TO BECAUSE CALLER WAS MATERIAL FOR OAKLAND POLICE'S PROBABLE

- ATTACHMENT PAGE -

[CONT.] CAUSE TO ARREST PETITIONER FOR ROBBERY CHARGE'S AND FOR A SEARCH WARRANT OF PETITIONER'S RESIDENCE. ALSO OFFICERS WHO WERE SEND TO PETITIONER'S RESIDENCE STATED THAT IT WAS BECAUSE OF CALLER STATEMENT THAT PETITIONER WAS THERE SUSPECT THE ENTERED AND SEARCHED PETITIONER'S RESIDENCE WITHOUT A WARRANT. (SEE CASE NOTES NO(S). 06-04874; OAKLAND POLICE REPORT NO. 06-022056; SGT. A. PEPPER'S AFFIDAVIT FOR SEARCH WARRANT). CALLER WAS MATERIAL IN PETITIONER'S PRELIMINARY EXAMINATIONS OR CRIMINAL DOCKETS NO(S). 517270 AND 525327 AND IN DOCKET NO 184404 TRIAL PROCEEDINGS. PROSECUTION HAS HAD A PHONE NUMBER TO GET IN CONTACT AND COULD OF DISCLOSED THE ANONYMOUS IDENTITY. COUNSEL FAILED TO FILE MOTION COMPLAINING ABOUT THE DEPRIVEMENT OF PETITIONER'S RIGHT TO CONFRONT THE WITNESS AGAINST HIM AND THE FAILURE HAS PREJUDGED HIM. BECAUSE OF COUNSEL'S FAILINGS IT IS A REASONABLE PROBABILITY THAT THE RESULTS WOULD HAVE BEEN FAVORABLE FOR THE PETITIONER.

CLAIM FOUR: PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION WHERE PROSECUTION FAILED TO DISCLOSE EXONERATORY EVIDENCE AND COURT EXCLUDED THE EXONERATORY EVIDENCE OF AN IDENTIFICATION TESTIMONY THAT NEGATED GUILT OF PETITIONER BEING THE ROBBER IN THE CRIMINAL CASE. THE EXCLUDED EXONERATORY IDENTIFICATION TESTIMONY WOULD OF REDUCED CULPABILITY OR GUILT AT PETITIONER'S TRIAL HAD THE EXONERATORY EVIDENCE HAD BEEN AVAILABLE TO BE INTRODUCED AT PETITIONER'S TRIAL, THIS IS A VIOLATION OF PETITIONER'S RIGHT TO A FAIR TRIAL UNDER THE SIXTH AMENDMENT.

- ATTACHMENT PAGE -

[CONT.] OF THE UNITED STATES CONSTITUTION, PETITIONER SEEKS  
REVERSAL OF CONVICTION AND DISMISSAL OF CAUSE.

SUPPORTING FACTS: ON JUNE 15, 2006 AT CRIMINAL DOCKET NO. 517270 PRELIMINARY EXAMINATION THE PROSECUTION BROUGHT TO THE STAND WAS COMPLAINING WITNESS SAMROS LA FARGUE, SHE WAS SWORN ON BEHALF OF THE PROSECUTION AND WAS TESTIFYING ABOUT THE ROBBERY THAT OCCURRED JANUARY 5, 2003, WHERE SHE WAS THE VICTIM ROBBED. DURING HER TESTIMONY THE PETITIONER WAS SHIELDED BY A BLACKBOARD BECAUSE LA FARGUE HAD NOT ATTENDED THE LINE UP OF MARCH 10, 2006 WHICH HER CO-WORKERS HAD ATTENDED AND WHERE PETITIONER WAS PICKED AS THE SUSPECT. LA FARGUE HAD CO-WORKERS WHO WERE ROBBED ON OTHER CAUSES CHARGED AGAINST PETITIONER. AFTER LA FARGUE HAD COMPLETED HER TESTIMONY THE PROSECUTION REMOVED THE BLACKBOARD, AND WAS ASKED IF SHE COULD IDENTIFY THE ROBBERY SUSPECT IN THE COURTROOM. AT THIS TIME THE PETITIONER WAS THE ONLY PERSON DRESSED IN JAIL CLOTHING ON THE DEFENSE SIDE OR THE COURTROOM. LA FARGUE WHOSE STATEMENT WAS WRITTEN AND WHOSE ORAL TESTIMONY WAS SHE COULD BE ABLE TO IDENTIFY THE ROBBERY SUSPECT IF SEEN AGAIN LOOK AT THE PETITIONER AND STATED THAT SHE DID NOT SEE THE ROBBERY SUSPECT IN THE COURTROOM. AFTER BEING ASKED AGAIN BY PROSECUTION AND BY THE DEFENSE WAS SHE SURE, LA FARGUE STATED SHE WAS SURE. THIS TESTIMONY AND NON-IDENTIFICATION WAS EXCLUDED OUT OF THE RECORD ALSO PRESUMED PETITIONER OF A FAIR TRIAL, WHERE THE NON-IDENTIFICATION POSSES EXONERATORY VALUE AND OF SUCH A NATURE THAT PETITIONER WAS UNABLE TO OBTAIN THE EXONERATORY EVIDENCE BY OTHER MEANS,

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[CONT.] THIS INCLUDES APPOINTED COUNSEL ASSISTANCE IN OBTAINING THE EXONERATORY EVIDENCE. THERE IS REASONABLE PROBABILITY OF A DIFFERENT OUTCOME THAT MR. LA FAEGUZ'S NON-IDENTIFICATION WAS NOT EXCLUDED CAUSES OF REASONABLY TAKEN TO PUT THE WHOLE TRIAL IN A DIFFERENT LIGHT AS TO UNMINE ANY CONFIDENCE IN PETITIONER'S TRIAL VERDICT.

CLAIM FIVE: TRIAL COURT'S DENIAL OF PETITIONER'S MOTION TO RECUSE / DISQUALIFY JUDGE CONGER TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.6 PREMATURE CHALLENGE, AND PETITIONER'S MOTION TO SET ASIDE TRIAL CRIMINAL DOCKET NO. 154409 WAS AN ABUSE OF DISCRETION AND VIOLATES PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS UNDER FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION. PETITIONER IS PREJUDICED BY TRIAL COURT'S RULING ON PETITIONER'S MOTION BEING CONTINUOUS AND RULING ON PETITIONER'S MOTION TO SET ASIDE WITHOUT ANY FINDING OF FACT OR LAW. PETITIONER SEEKS FOR REVERSAL OF CONVICTION AND A DISMISSAL OF CAUSE.

SUPPORTING FACTS: ON JANUARY 22, 2007 CRIMINAL DOCKET NO. 154409 PETITIONER WAS ARRAIGNED FOR ROBBERY COUNTS. ON MARCH 12, 2007 JUDGE JULIE CONGER WAS ASSIGNED AS TRIAL JUDGE OF CRIMINAL DOCKET NO. 154409. ON MARCH 13, 2007 PETITIONER MADE HIS FIRST APPEARANCE IN JUDGE CONGER'S COURTROOM, WHERE PETITIONER ADVISED APPOINTED COUNSEL OF DESIRE TO HAVE JUDGE CONGER RECUSED / DISQUALIFIED. COUNSEL AFTER A IN CHAMBERS CONFERENCE INFORMED OF RECORD THAT JUDGE CONGER HAD DENIED THE MOTION. ON MARCH 14, 2007 COUNSEL (APPOINTED) INDICATED ON RECORD OF CRIMINAL DOCKET NO. 154409

PETITION FOR WRT OF HABEAS CORPUS - 6(h)

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[CONT.] THAT PETITIONER WANTED TO MOVE TO DISQUALIFY JUDGE CONGER BASED ON HER RULING IN A MARSDEN HEARING IN THE CRIMINAL DOCKET NO. 152773 WHERE SHE MADE COMMENTS LIKE THAT A GOOD REASON FOR AN APPEAR AND DENIES THE MARSDEN MOTION WHICH KEPT THE COUNSEL WHO MOVED TO HAVE PETITIONER DISQUALIFIED FOR COUNSEL'S BELIEF THAT PETITIONER SUFFUSED TO HAVE A MENTAL INCOMPETENCY. AND ALSO BASED ON THE RIGHT TO EXERCISE A PEREMPTORY CHALLENGE TO REMOVE JUDGE CONGER OFF AS TRIAL JUDGE, THIS IS PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURES SECTION 170.6. JUDGE CONGER FIRST WITH APPOINTED COUNSEL MISSTATES THE LAW WHERE PETITIONER HAS A RIGHT TO EXERCISE THE PEREMPTORY CHALLENGE. JUDGE CONGER STATES THAT ONLY APPOINTED COUNSEL HAS THE RIGHT TO EXERCISE THE CHALLENGE. APPOINTED COUNSEL STATED THAT IT WAS NOT HER POSITION FOR AN EXERCISE OF THE CHALLENGE OR HER DESIRE. LATER ON OF MARCH 14, 2006 TRIAL SESSION THE TRIAL JUDGE REPLIED THAT PETITIONER CAN EXERCISE A CODE OF CIVIL PROCEDURE SECTION 170.6 PEREMPTORY CHALLENGE TO REMOVE JUDGE CONGER AND FURTHER MISSTATES THE LAW WHERE SHE BASED HER DENIAL ON THE PEREMPTORY CHALLENGE BEING MADE TWO DAYS AFTER SHE WAS ASSIGNED TO THE CAUSE AS TRIAL JUDGE, AND ALTHOUGH COUNSEL WAS ADVISED MARCH 13, 2006 THE FIRST APPEARANCE PETITIONER APPEARED BEFORE JUDGE CONGER THAT HE DESIRE HER REMOVED. THE MOTION, BY JUDGE CONGER'S RULING SHOULD OF BEEN MADE BY PETITIONER ON HIS FIRST APPEARANCE BEFORE HER. AND ALTHOUGH COUNSEL WAS ADVISED THAT DAY, FROM JUDGE JUDGE CONGER'S RULING PETITIONER HAD TO MAKE THE MOTION HIMSELF. THIS COMES AFTER

PETITION FOR WRIT OF HABEAS CORPUS - G(i) -

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[CONT.] JUDGE CONGER STATED EARLY IN THE HEARING THAT ONLY APPOINTED COUNSEL COULD MAKE THE CHALLENGE, BUT STILL CODE OF CIVIL PROCEDURES SECTION 170.6 READS "IF DIRECTED TO THE TRIAL OF A CAUSE WHICH HAS BEEN ASSIGNED TO A JUDGE FOR ALL PURPOSES, THE MOTION SHALL BE MADE TO THE ASSIGNED JUDGE OR PRESIDING JUDGE BY A PARTY WITHIN 10 DAYS AFTER NOTICE OF THE ALL PURPOSE ASSIGNMENT, OR IF THE PARTY HAS NOT YET APPEARED IN THE ACTION, THEN WITHIN 10 DAYS AFTER THE APPEARANCE" AND LEAVES JUDGE JUDGE CONGER MISSTATING THE LAW WHICH APPLIES PETITIONER OF OUR PROCESS OF LAW UNDER UNITED STATES CONSTITUTION AND HAS PETITIONER PREJUDGED BY JUDGE JUDGE CONGER ERRONEOUS DENIAL OF THE PERTINENT CHALLENGE MOTION. BECAUSE OF THE ACTIONS OF JUDGE CONGER IT IS A REASONABLE PROBABILITY THAT THE RESULTS WOULD BE FAVORABLE FOR THE PETITIONER.

CLAIM SIX: COURT APPOINTED COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL UNDER FEDERAL CONSTITUTIONAL RIGHT OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION WHERE PETITIONER SUFFERED A PREJUDICE TO HIS DUE PROCESS OF LAW RIGHTS, WHERE HE WAS NOT BROUGHT TO A PROMPT PROBABLE CAUSE DETERMINATION AFTER HIS WARRANTLESS ARREST BY OAKLAND POLICE FOR ROBBERY.  
 THERE WAS AN UNNECESSARY DELAY AND INTENTIONALLY DONE TO GAIN A TACTICAL ADVANTAGE OVER THE PETITIONER. APPOINTED COUNSEL FAILED TO CHALLENGE THE VIOLATION ON A MOTION TO SET ASIDE AND HAS PREJUDICED THE PETITIONER. PETITIONER SEEKS REVERSAL OF CONVICTION AND DISMISSAL OF CAUSE, BECAUSE OF COUNSEL'S FAIRNESS IT IS A REASONABLE PROBABILITY THAT THE RESULTS WOULD HAVE BEEN FAVORABLE FOR PETITIONER.

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[CONT.]

SUPPORTING FACTS: ON MARCH 8, 2006 OAKLAND POLICE ARRESTED PETITIONER FOR ROBBERY WARRANTLESS. ON MARCH 10, 2006 PETITIONER WAS PLACED INTO A (SUGGESTIVE) LINE UP, IT WAS 7:15 PM AND PETITIONER HAD NOT BEEN ARRANGED FOR THE WARRANTLESS ARREST OF ROBBERY ON MARCH 8, 2006. ON MARCH 13, 2006 PETITIONER WAS ARRESTED FOR MULTIPLE COUNTS OF ROBBERY AND SINCE IT HAD A PROMPT PROBABLE CAUSE DETERMINATION THAT SAME DAY. THE COURT APPOINTED COUNSEL FAILED TO MAKE ANY MOTIONING TO SUPPRESS THE (SUGGESTIVE) LINEUP ON THE BASIS OF AN UNNECESSARY DELAY WAS INTENTIONALLY MADE TO GAIN TACTICAL ADVANTAGE OVER PETITIONER TO PARTICIPATE IN THE LINEUP AFTER A PROMPT PROBABLE CAUSE DETERMINATION SHOULD OF BEEN CONDUCTED TO FURTHER RESTRAIN PETITIONER ON CUSTODY. THE LINEUP THAT WAS CONDUCTED MARCH 10, 2006 WAS FOR THE PURPOSE TO PROVIDE EVIDENCE TO PROSECUTE PETITIONER, WHERE THE IDENTIFICATION OF THE (SUGGESTIVE) LINEUP WAS USED AS CHIEF EVIDENCE TO PROSECUTE THE PETITIONER. BECAUSE OF COUNSEL'S FAILURES IT IS A REASONABLE PROBABILITY THAT THE RESULTS WOULD HAVE BEEN FAVORABLE FOR PETITIONER.

CLAIM SEVEN: COURT APPOINTED COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL TO PETITIONER BY HAVING A CONFLICT OF INTEREST AGAINST PETITIONER'S MENTAL COMPETENCY, WHERE NO MENTAL ILLNESS EXISTED, OR WHERE NO SIGN OF MENTAL INCOMPETENCE, OR ANY DEVELOPMENT OF A MENTAL DISABILITY EXISTED TO HOLD CONCERN TO MOTION COURT TO HAVE THE PETITIONER EVACUATED. THE COURT APPOINTED COUNSEL VIOLATED PETITIONER'S RIGHT

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[CONT.] TO EFFECTIVE COUNSEL UNDER THE SIXTH AMENDMENT AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. PETITIONER SEEKS REVERSAL OF CONVICTION AND DISMISSAL OF CASE.

SUPPORTING FACTS: AFTER A JULY 31, 2006 MARRIEN HEARING WHICH WAS HELD TO DETERMINE IF COUNSEL SHOULD BE EXCUSED, APPOINTED COUNSEL TONY L CHENG HAD A CONFLICT OF INTEREST AGAINST PETITIONER. ON AUGUST 2, 2006 COUNSEL WENT IN TO COURT ABSENT PETITIONER BEING PRESENT AND MADE A MOTION FOR PETITIONER TO BE EXCUSED. BECAUSE COUNSEL BASED A SUPPORT OR REVIEW OF FILES AND CONVERSATIONS HAD A PRESENTED DOUBT AS TO PETITIONER'S MENTAL COMPETENCY. PETITIONER'S STATE AND FEDERAL SPEEDY TRIAL RIGHT WERE SET ASIDE FROM AUGUST 2, 2006 TO OCTOBER 25, 2006 WHILE PETITIONER WAS FOUND COMPETENT TO STAND TRIAL. THE JUDGE WHO GRANTED COUNSEL'S MOTION FOR PETITIONER TO BE EXCUSED STATED ON DECEMBER 18, 2006 THAT HAD HE LOOKED AT THE SUPPORT IT FILE COUNSEL BASED HIS GROUNDS ON, THE JUDGE WOULD HAVE SEEN THAT PETITIONER HAD NO PSYCHIATRIC BACKGROUND, AND THE COUNSEL MOTION WAS BASED ON A DISAGREEMENT IN TACTICS. THE JUDGE FURTHER STATED NOTHING IN THE COURT RECORD, PETITIONER'S PAST HISTORY OR ANYTHING CURRENT THAT SHOWED THAT PETITIONER WAS INCOMPETENT IN THE SENSE OF HIS ABILITY TO CHOOSE WHICH LEGAL TACTIC HE DESIRED TO TAKE. (SEE CRIMINAL DOCKET NO. 152773, DECEMBER 18, 2006 TRANSCRIPT PGS 1-3 LINE 1-19). ON OCTOBER 25, 2006 PETITIONER WAS APPOINTED ANNEE AURE AT THE TIME OF THE COURT RULING PETITIONER WAS MENTALLY COMPETENT. COUNSEL SHOWED CONFLICT OF INTEREST AGAINST PETITIONER AS WELL.

- ATTACHMENT PAGE -

[CONT.] WHERE PETITIONER IN CRIMINAL DOCKET NO. 152773 AND ALSO IN CRIMINAL DOCKET NO. 828397 MADE ATTEMPTS TO HAVE COUNSEL EXCHANGED THROUGH MARESON HEARINGS, WITH NEGATIVE RESULTS PETITIONER HAD TO GO THROUGH HIS TRIAL PROCESS WITH COUNSEL WHO HELD AN APPOINTED COUNSEL WHO HELD A CONFLICT OF INTEREST AGAINST PETITIONER. ON MAY 14, 2007 COURT APPOINTED COUNSEL WROTE A LETTER TO DEPUTY PROBATION OFFICER ENRIQUE QISNEROS REGARDING SUPPOSE IT ON PETITIONER BE HALF, BUT CLEARLY AND PREJUDICIALLY DESCRIBES HIM HAVING AN UNREMOTINLY MENTAL ILLNESS WHICH IS UNTREATED. COUNSEL AGIN IN LETTER DATES MAY 24, 2007 TO THE TRIAL JUDGE JULIE CONGER STATED THAT PETITIONER'S EVALUATION BY TWO PSYCHIATRISTS FAILED TO SUPPORT IT GRASP THAT PETITIONER'S OPPRESSIVE PERSONALITY DISORDER WAS SINGULAR FIXATED ON THE ISSUE OF DEFENDING HIS CASE. COUNSEL GOES ON TO STATE TO THE TRIAL JUDGE HER REQUEST FOR PETITIONER'S SENTENCE DETERMINATION IS APPROPRIATE BECAUSE OF PETITIONER'S CRIMINAL CONDUCT, HIS DRUG ADDICTION, AND HER OPINION OF PETITIONER HAVING A "COMPLICATING MENTAL ILLNESS." THESE FACTS CONSTITUTE A REAL CONFLICT OF INTEREST BETWEEN APPOINTED COUNSEL AND PETITIONER AND REVEALS THAT PETITIONER WAS PREJUDICED TO HAVING EFFECTIVE ASSISTANCE OF COUNSEL.

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1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 [ ATTACHMENT PAGES ]

5 11

6 11

7 Do you have an attorney for this petition? Yes        No X

8 If you do, give the name and address of your attorney:

9 N/A

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on APRIL 20, 2008

14 Date

15   
Signature of Petitioner

16  
17  
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20 (Rev. 6/02)

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[CONT.] U.S. v. SPARKS (9th Cir. 1996) 87 F.3d 276, 279; GERSTIN v. PUGH (1975) 420 U.S. 103, 113-114, 120, 125 FN 26, SEE pp. 120 FN 21; COUNTY OF RIVERSIDE v. McLAUGHLIN (1991) 500 U.S. 44, 56-58; KANEKO V. HONOLULU (9th Cir. 1989) 879 F.2d 607, 610-611; (Id.) WILLIS v. CITY OF CHICAGO (7th Cir. 1993) 999 F.2d 284, 288-289

CLAIM SEVEN: STANKEVICH v. WASHINGTON (1984) 466 U.S. 668, 692; CUGLIO v. SULLIVAN (1980) 446 U.S. 335, 348; U.S. v. DEL MURO (9th Cir. 1996) 87 F.3d 1078, 1080-1081

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## - CASE CITATIONS RELATING TO CASE -

CLAIM ONE: STRICKLAND v. WASHINGTON (1984) 466 U.S. 668; U.S. v. CRONIN (1984) 466 U.S. 648; KIMMELAN v. MORRISON (1986) 477 U.S. 365; MURRY v. U.S. (1988) 487 U.S. 1 at pp 542-544; PAYTON v. NEW YORK (1980) 445 U.S. 573, 587-589; U.S. v. VASEY (1987) 834 F.2d 782, 788-790; In re WILSON (1992) 3 Cal. 4th 945; PEOPLE v. MEDOCIA (1997) 15 Cal. 2d 264

CLAIM TWO: GERNSTEN v. PUGH (1975) 420 U.S. 103, 125; COUNTY OF RIVERSIDE v. MC LAUGHLIN (1991) 500 U.S. 44, 56; STRICKLAND v. WASHINGTON (1984) 466 U.S. 668, 688, 694; SERRATO v. SUPERIOR COURT (1978) 76 Cal. App. 489, 464-466; CANDUM v. SUPERIOR COURT (1981) 30 Cal. 3d 1, 6; PEOPLE v. ALTAIRZ (1982) 209 App. 3d 567, 574-575; IRVING v. SUPERIOR COURT (1989) 93 Cal. App. 596, 600; CARRAWAY v. SUPERIOR COURT (1981) 118 Cal. App. 150, 153-154; PEOPLE v. MACEY (1985) 176 Cal. App. 177, 184-186; PEOPLE v. KOWALEWSKI (1987) 196 Cal. App. 3d 174, 179; PEOPLE v. MARTINEZ (2000) 22 Cal. 4th 750, 766; PEOPLE v. CEBESMA (1987) 43 Cal. 3d 171, 216, 233; COLEMAN v. ALABAMA (1970) 399 U.S. 1, 11

CLAIM THREE: STRICKLAND v. WASHINGTON (1984) 466 U.S. 668; U.S. v. CRONIN (1984) 466 U.S. 648; KIMMELAN v. MORRISON (1986) 477 U.S. 365; CRAWFORD v. WASHINGTON (2004) 124 S.Ct. 1354, 1367-1368, 1374; MADDOT v. UNITED STATES (1895) 156 U.S. 237, 15 S.Ct. 337, 39 L.Ed. 409; OHIO v. ROBERTS (1960) 348 U.S., AD pp. 67-70; PEOPLE v. PARTLOW (1978) 84 Cal. App. 3d 540; THEODORE v. SUPERIOR COURT (1972) 8 Cal. 3d 77; BRADY v. MARYLAND (1963) 373 U.S. 83.

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- CASE CITATIONS RELATED TO CASE I (cont'd.) -

CLAIM FOUR: BRADY v. MARYLAND (1963) 373 U.S. 83, 87; THOMAS v. GOLDSMITH (9th Cir. 1992) 979 F.2d 746, 749-50; UNITED STATES V. BAGLEY (1985) 473 U.S. 667, 676-77; GIGLIO v. U.S. (1972) 405 U.S. 150, 154; U.S. v. HANNA (9th Cir. 1995) 55 F.3d 1456, 1460-61; KYLE v. WHITLEY (1995) 115 S.Ct. 1585, 1587; U.S. v. WOOD (9th Cir. 1995) 57 F.3d 733, 737; BROWN v. BORG (9th Cir. 1991) 951 F.2d 1011, 1015; UNITED STATES v. BAGLEY (1985) 473 U.S. 667, 669-689; CALIFORNIA v. TROMBETTA (1984) 467 U.S. 479, 488; HILLIARD v. SPALDING (9th Cir. 1983) 719 F.2d 1443, 1447.

CLAIM FIVE: MC CARTHY v. COMMISSION ON JUDICIAL QUALIFICATION (1974) 12 Cal. 3d 812, 531-552; SOLBERG v. SUPERIOR COURT (1977) 19 Cal. 3d 182, 190; PEOPLE v. HALL (1978) 86 Cal. App. 3d 753; PEOPLE v. SUPERIOR COURT (HALL) 160 App. 3d 1081; IN RE JOSE S. (1978) 78 Cal. App. 619, 627; VOIGT v. SAUVEL (9th Cir. 1995) 90 F.3d 1532, 1565; U.S. v. BAUER (9th Cir. 1996) 1549, 1560; U.S. v. BOSCH (9th Cir. 1991) 951 F.2d 1546, 1548-49.

CLAIM SIX: STRICKLAND v. WASHINGTON (1984) 466 U.S. 668; U.S. v. CRONIE (1984) 466 U.S. 648; KIMMELMAN v. MORRISON (1986) 477 U.S. 365, 385; MURRY v. CARRIER (1986) 477 U.S. 478, 496; ~~REED v. BLACK BURN~~ BLACK BURN v. ALABAMA (1960) 361 U.S. 199, 205; CHAPMAN v. CALIFORNIA (1967) 386 U.S. 18, 23-24; U.S. v. SACCARO (1980) 448 U.S. 83, 86-87; RAKAS v. ILLINOIS (1978) 439 U.S. 128, 134; RANKINS v. KENTUCKY (1980) 448 U.S. 98, 104-05; U.S. v. MARION (1971) 404 U.S. 307, 322, 324, 325-26; U.S. v. LOURASCO (1977) 431 U.S. 783, 789-90; U.S. v. GOUVREAU (1984) 467 U.S. 180, 182;

MARY JAMESON  
AUTOMATIC APPEALS SUPERVISOR  
JORGE NAVARRETE  
SUPERVISING DEPUTY CLERK  
SAN FRANCISCO

NATALIE ROBINSON  
SUPERVISING DEPUTY CLERK  
LOS ANGELES



~~RECEIVED~~ SAN FRANCISCO 94102  
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## Supreme Court of California

FREDERICK K. OHLRICH  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

January 25, 2008

Eugene D. Rutledge F-79385  
High Desert State Prison  
Facility B (Building B1, Cell 115)  
P. O. Box 3030  
Susanville, CA 96127-3030

### Re: S158052 – Rutledge (Eugene D.) on Habeas Corpus

Dear Sir:

We acknowledge receipt of your letter dated 1-20-2008. Please be advised that your petition for writ of habeas corpus received and filed 11-8-2007 is still pending. A copy of your petition is enclosed.

The California Rules of Court do not set a time limit within which the Supreme Court must act on habeas corpus petitions. The length of time the court requires to rule on such a petition depends on the complexity of the issues raised in the petition, and on the constraints imposed by the court's workload.

While we do not know in advance when the court will decide your case, a copy of the court's decision will be mailed to you the same day it is filed. Counsel is not appointed in these cases unless the court files an order to show cause. If such an order is filed, counsel would be appointed to represent you in any proceeding that may be scheduled.

Very truly yours,

FREDERICK K. OHLRICH  
Court Administrator and  
Clerk of the Supreme Court

By: H. Miner, Deputy Clerk

A handwritten signature in black ink, appearing to read "H. Miner".

HM/hm  
Enclosures

*Re-sent 1-29-08*

MARY JAMESON  
AUTOMATIC APPEALS SUPERVISOR  
  
JORGE NAVARRETE  
SUPERVISING DEPUTY CLERK  
  
SAN FRANCISCO

NATALIE ROBINSON  
SUPERVISING DEPUTY CLERK  
  
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## Supreme Court of California

FREDERICK K. OHLRICH  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

November 15, 2007

Eugene Darrel Rutledge # F-79385  
San Quentin State Prison  
San Quentin, CA 947974

Re: **S152658 - Letter dated November 5, 2007**

Dear Mr. Rutledge:

In reply to your letter of November 5, 2007, received November 8, 2007, you are advised that your petition for writ of habeas corpus, was denied September 21, 2007. I have attached a copy of the order for your review.

Please be advised that we have added your successive papers of May 23, 2007 to case number S158052 which is currently pending at this time. The California Rules of Court do not set a time limit within which the Supreme Court must act on habeas corpus petitions. The length of time the court requires to rule on such a petition depends on the complexity of the issues raised in the petition, and on the constraints imposed by the court's workload.

While we do not know in advance when the court will decide your case, a copy of the court's decision will be mailed to you the same day it is filed. Counsel is not appointed in these cases unless the court files an order to show cause. If such an order is filed, counsel would be appointed to represent you in any proceeding that may be scheduled.

Very truly yours,

FREDERICK K. OHLRICH  
Court Administrator and  
Clerk of the Supreme Court

By: Robert R. Toy, Deputy Clerk

MARY JAMESON  
AUTOMATIC APPEALS SUPERVISOR  
  
JORGE NAVARRETE  
SUPERVISING DEPUTY CLERK  
  
SAN FRANCISCO

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## Supreme Court of California

FREDERICK K. OHLRICH  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

February 8, 2008

Mr. Eugene Darrel Rutledge  
F-79385  
P. O. Box 3030  
Susanville, CA 96127-3030

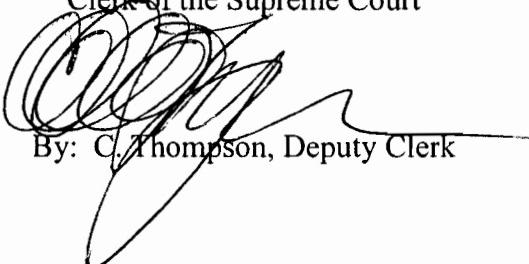
**Re: S158052 – In re Eugene Darrel Rutledge on Habeas Corpus**

Dear Mr. Rutledge:

This is in response to your letter of February 3, 2008, received on February 7, 2008. After checking our records, it shows that we never received your supplement dated November 25, 2007. Please resubmit the supplement as soon as possible. Thank you.

Very truly yours,

FREDERICK K. OHLRICH  
Court Administrator and  
Clerk of the Supreme Court

  
By: C. Thompson, Deputy Clerk

Enclosures

MARY JAMESON  
AUTOMATIC APPEALS SUPERVISOR  
  
JORGE NAVARRETE  
SUPERVISING DEPUTY CLERK  
  
SAN FRANCISCO

NATALIE ROBINSON  
SUPERVISING DEPUTY CLERK

LOS ANGELES



## Supreme Court of California

FREDERICK K. OHLRICH  
COURT ADMINISTRATOR AND  
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February 20, 2008

Eugene Darrel Rutledge, F-79385  
P.O. Box 3030  
Susanville, CA 96127-3030

Re: S158052/S160704 – In re Eugene Darrel Rutledge on Habeas Corpus

Dear Mr. Rutledge:

The court is in receipt of your letter dated February 13, 2008 in regard to the two above-referenced petitions. Enclosed are copies of both petitions. It is unclear from your letter whether you wish for these petitions to remain as two separate petitions or whether your intention was to submit the documents filed as new case S160704 as a supplement to the existing S158052. Please let this court know in writing by March 12, 2008 whether you wish to combine both filings under the case number S158052 or whether you wish to keep them as two separate petitions. If we do not hear from you by March 12, the cases will be kept as two separate petitions.

Very truly yours,

FREDERICK K. OHLRICH  
Court Administrator and  
Clerk of the Supreme Court

*Bridget A. Newman*

By: Bridget A. Newman  
Paralegal

enclosure

rutledge.doc

**S158052**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re EUGENE DARREL RUTLEDGE on Habeas Corpus

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The petition for writ of habeas corpus is denied. (See *In re Swain* (1949) 34 Cal.2d 300, 304; *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

**SUPREME COURT  
FILED**

**MAR 26 2008**

**Frederick K. Ohlrich Clerk**

---

**Deputy**

**GEORGE**

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**Chief Justice**

**Docket Listing**

Page 1 of 1

S160704

**Case Number:** S160704**Current Status:** closed**Case Title:** RUTLEDGE (EUGENE D.) ON H.C.**Start Date:** 02/07/2008**Case Category:** Original Proceeding - Habeas

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**Court of Appeals Case Information**

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**Lower Court Case Information**

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**Party Information****Attorneys**

EUGENE DARREL RUTLEDGE  
Petitioner  
P. O. Box 3030  
Susanville, CA 96127-3030

[None]

---

**Docket Events****Date**      **Event**

- 02/07/2008 Petition for writ of habeas corpus filed  
Eugene Darrel Rutledge, Petitioner in Pro Per
- 02/19/2008 Received:  
Letter from petitioner, dated 2-13-08, re case S158052
- 02/20/2008 Letter sent to:  
petitioner, requesting clarification of his request by March 12.
- 02/29/2008 Received:  
Letter from petitioner dated February 26, 2008  
(copy mailed)
- 03/04/2008 Petition stricken (case closed)  
The filing of the above-entitled petition for writ of habeas corpus on February 7, 2008, is ordered stricken and it is now ordered filed as a supplement to the petition for writ of habeas corpus in (S158052) In re Eugene Darrell Rutledge on Habeas Corpus.



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EUGENE DARREL RUTLEDGE

PLAINTIFF or PETITIONER

v.

A. FELKER, WARDEN OF HIGH DESERT  
STATE PRISON,

Case Number:

Defendant or Respondent

PROOF OF SERVICE

JERRY BROWN, ATTORNEY GENERAL OF  
THE STATE OF CALIFORNIA

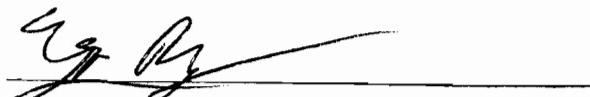
I hereby certify that on APRIL 20, 2008, I served a copy of the attached PETITION FOR WRIT OF HABEAS CORPUS ~~APPLICATION TO  
PROCEED  
IN FORMA  
PAUPERIS~~, by placing a copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the United States Mail at SACRAMENTO, CALIFORNIA:

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
450 GOLDEN GATE AVENUE, BOX 36060  
SAN FRANCISCO, CA. 94102

AND

OFFICE OF THE ATTORNEY GENERAL  
455 GOLDEN GATE AVE.  
SAN FRANCISCO, CA. 94102

I declare under penalty of perjury that the foregoing is true and correct.



EUGENE DADDIE RUTRESE

CDQ F-79385  
HIGH DESERT STATE PRISON  
Facility B (Building B1, Cell #5)  
P.O. Box 3030  
SUSANVILLE, CA. 96127



HIGH DESERT STATE PRISON

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San Francisco, California 94102



STATE PRISON

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